

COST SHARING AGREEMENT CALFED BAY-DELTA PROGRAM

I) Principles of Agreement

A) Preamble

In order to create a framework for equitably sharing the costs of the long-term Bay-Delta Solution, and pursuant to Title XI of Public Law 104-333, California Bay Delta Environmental Enhancement ("Bay-Delta Act") and the Safe, Clean, Reliable Water Supply Act ("Proposition 204") approved by the voters of California on November 5, 1996 this agreement ("Agreement") is made and entered into on this _____ day of _____ by the State of California ("State" or "California") represented by the Secretary for Resources and the United States Secretary of the Interior.

B) Purposes

- 1) Comply with Proposition 204. To comply with section 78537 of Proposition 204 which requires that the State secure, to the greatest extent possible, federal and nonfederal matching funds to accompany the expenditure of \$60 million in State Category III funds and to comply with section 78684.10 of Proposition 204 which requires that a State-Federal cost sharing agreement be executed before the \$390 million authorized for the Bay-Delta Ecosystem Restoration Account can be expended.
- 2) Comply with Bay-Delta Act. To comply with the provisions of the Bay-Delta Act which authorize expenditures of \$ 143,300,000 for each of federal fiscal years 1998, 1999, and 2000 for the initial federal share of the Category III program and of developing and implementing a long-term Bay-Delta ecosystem restoration program, in accordance with the cost sharing agreement described in section B.1 above.
- 3) Enable Expenditures of Federally Appropriated Funds. To provide a mechanism, under existing authorities and in coordination with existing and ongoing programs, to initiate early implementation of projects and programs common to all of the alternatives now under consideration by the CALFED Bay-Delta Program with the goal of providing early environmental and other benefits and providing valuable information for use in adaptively managing the Bay-Delta in future years as the CALFED Bay-Delta Program continues.
- 4) Coordinate Other Expenditures under Proposition 204 with Bay-Delta Program. To promote the goal that all funds authorized by Proposition 204 for expenditure on aspects of the Bay-Delta and related watersheds are coordinated with the goals, objectives, and Solution strategies of the CALFED Bay-Delta Program.
- 5) Coordinate Expenditures with Existing Programs. To provide a mechanism for coordinating expenditures of new funds authorized by the Bay-Delta Act and Proposition 204 with expenditures under existing State, Federal, local and non-

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governmental programs with the goal of developing an integrated planning process for restoration planning, project selection, and implementation, thereby increasing the overall effectiveness of restoration efforts in the Bay-Delta ecosystem.

- 6) Establish Framework of Principles for Long-term Cost Sharing. To set forth a framework of principles that can guide State, Federal, local and non-governmental cost sharing for the long-term Solution selected for the Bay-Delta.

C) Definitions

The following terms have the following meanings:

- 1) "Action" means a project or program selected for funding pursuant to this Agreement and subject to cost sharing pursuant to this Agreement and for which costs will be itemized individually.
- 2) "Baseline" for spending on Bay-Delta ecosystem restoration means those funds, programs and projects set forth in Appendix A, which is incorporated into this Agreement by this reference.
- 3) "Bay-Delta" means the San Francisco Bay, Sacramento-San Joaquin Delta Estuary.
- 4) "Bay/Delta Advisory Council or BDAC" means a citizen advisory committee chartered under the Federal Advisory Committee Act ("FACA") to advise the agency participants in CALFED. It includes representatives of stakeholder groups jointly selected by the Governor of California and the U.S. Secretary of the Interior.
- 5) "CALFED" means a consortium of State and Federal agencies with management and regulatory responsibilities in the Bay-Delta, established pursuant to the Framework Agreement.
- 6) "CALFED Bay-Delta Program or Program" means the project team that began work in May 1995 toward developing the long-term Solution for the Bay-Delta. The Program was created pursuant to the Framework Agreement and subsequent implementing agreements including the CALFED Funding, Administration and Program Agreement.
- 7) "Category III" means non-flow-related measures for Bay-Delta ecosystem protection and restoration provided for in the Delta Accord and incorporated by the SWRCB in its Water Quality Control Plan for the Bay-Delta as part of the overall plan for Bay-Delta water quality.
- 8) "Costs" means necessary and reasonable direct and indirect costs incurred, but not necessarily paid, for the implementation of Actions taken under this Agreement. Direct costs shall include labor and related fringe benefits, materials and supplies, travel, equipment depreciation, and items or services procured

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directly for carrying out the Actions. Indirect costs shall include the normal and necessary administrative and general costs of activities that are reasonably allocated to performing obligations under this Agreement. Allowance of costs under this Agreement including the basis for allocating indirect costs, shall be subject to cost allowance guidelines provided in Office of Management and Budget Circular A-87, dated January 15, 1981 and, with respect to expenditures by the State, shall be subject, where appropriate, to the caps on administrative costs provided in Proposition 204.

- 9) "Delta Accord" means the Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government signed in December 1994 by representatives of the State and Federal governments and urban, agricultural, and environmental interests.
- 10) "Early Implementation Projects" means those projects and programs which meet the criteria listed in section (E)4(b), below.
- 11) "Ecosystem Restoration Program Plan" means the long-term program to address Bay-Delta ecosystem health, which is common to all alternatives to be considered in the CALFED Programmatic Environmental Impact Statement/Report.
- 12) "Ecosystem Roundtable" means a group of CALFED agency staff and stakeholders appointed to insure that stakeholder input is included in the process of priority setting and project selection for Bay-Delta ecosystem restoration. The Ecosystem Roundtable is an Advisory Group to BDAC for FACA purposes.
- 13) "Fiscal Year" means the federal fiscal year beginning October 1 and ending September 30.
- 14) "Framework Agreement" means the Memorandum of Agreement between the Governor's Water Policy Council and the Federal Ecosystem Directorate executed in summer 1994.
- 15) "Local agency" means any city, county, city and county, district, public authority, public agency, or any other political subdivision, including joint powers agencies, of the State of California.
- 16) "National Fish and Wildlife Foundation" means a private, not-for-profit conservation organization established by an Act of Congress (P.L. 98-244, as amendment; 16 U.S.C. 3701 et seq.) whose purpose is to encourage, accept, and administer private gifts for the benefit of, or in connection with, the activities and services of the U.S. Fish and Wildlife Service, and to undertake and conduct such activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States.

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- 17) "Restoration Coordination Program" means the effort within the CALFED Bay-Delta Program to administer the Category III program and facilitate coordination with other similar programs pursuing ecosystem restoration related to the Bay-Delta system.
- 18) "Solution" means the comprehensive long-term program of Actions developed by the CALFED Bay-Delta Program to address the problems of the Bay-Delta.
- 19) "Stakeholders" means urban and agricultural water users, fishing interests, environmental organizations, businesses, tribes, and others which use or have an interest in the Bay-Delta Estuary and who contribute to Bay-Delta Program design and to the problem-solving/decision-making process.
- 20) "Stressors" mean the primary problems contributing to the decline of the species and habitats of greatest important to health of the Bay-Delta Ecosystem.
- 21) "SWRCB" means the California State Water Resources Control Board.
- 22) "Task Order" means a written commitment by the appropriate State or Federal agency or agencies, as described in Appendix C, setting forth tasks necessary to carry out an individual Action or element thereof.

D) Background and History

- 1) Importance of Resource. The Bay-Delta is the largest estuary on the West Coast of North America, providing habitat for 120 fish and wildlife species, some of which are listed as threatened or endangered. The Bay-Delta is also critical to California's economy, providing drinking water for more than 22 million Californians, serving industry, and providing irrigation water for millions of acres growing more than 200 crops, including 45 percent of the nation's produce.
- 2) History of Conflict. The Bay-Delta has for decades been the focus of competing interests—economic and ecological, urban and agricultural, and it has suffered from this. Habitats are declining, and several native species are endangered. The Bay-Delta no longer serves as a reliable source of high-quality water, and levees face an unacceptably high risk of failure. Though many efforts have been made to address these problems, the issues are complex and interrelated, and many remain unresolved. As Governor Pete Wilson noted in his Executive Order W-38-92, "...past water development has often taken place at the expense of fish and wildlife resources, and availability of water plays a key role in most efforts to mitigate for past harms and to restore and manage fish and wildlife populations and habitat." He further noted, "...continued population growth will create increased demands by urban and agricultural water users, and add to the challenge of restoring and maintaining healthy, viable fish and wildlife populations."
- 3) Creation of CALFED Bay-Delta Program. Pursuant to the Framework Agreement, signed by multiple State and Federal parties in the summer of 1994,

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and subsequent implementing agreements, the CALFED Bay-Delta Program was established in May 1995. The Program was charged with developing a comprehensive and long-term Solution to the problems associated with the Bay-Delta, including an equitable allocation of program costs among beneficiary groups, and of developing a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta. The Program is in the process of preparing a programmatic EIS/EIR for a long-term comprehensive plan that will resolve problems related to water quality, water supply reliability, levee system integrity, and ecosystem quality.

- 4) Delta Accord. In December 1994, representatives of the State and Federal governments and stakeholder representatives signed the Delta Accord. In addition to implementing the CALFED Bay-Delta Program, the signatories to the Delta Accord agreed to implementation of a Bay-Delta protection plan through the SWRCB including water quality standards and operational constraints for the State and Federal water export projects; provisions for implementation of the Federal Endangered Species Act; and Category III principles. Under the Category III principles, the State and Federal governments and the stakeholders committed to develop, implement and finance non-flow measures for Bay-Delta ecosystem protection, including monitoring and the screening of unscreened diversions in the Bay-Delta watershed.

- 5) Recent State and Federal Legislation. Proposition 204 was passed by the voters of California on November 5, 1996. It authorizes \$995 million in bond issuance to cover State cost sharing for activities to restore the Bay-Delta ecosystem and for other water resources activities in California. In September 1996, the President signed the Bay-Delta Act that authorizes \$143.3 million per year in additional Federal spending for Bay-Delta ecosystem restoration activities in fiscal years 1998, 1999, and 2000. The authorization became effective in November 1996 when California voters approved Proposition 204.

The budget of the Department of the Interior for Federal fiscal year 1998 includes a request for the full \$143.3 million authorized in the Bay-Delta Act. The administration proposes to place the \$143.3 million in a new account under the U.S. Bureau of Reclamation, but to allocate these funds among participating Federal agencies based on programs recommended by CALFED and approved by the Secretary of the Interior. These funds would be used to match State cost sharing funds pursuant to this Agreement. The President's fiscal year 1998 Budget submission to Congress indicated that the Administration anticipates similar requests for federal fiscal years 1999 and 2000.

E) Solution

- 1) Addresses Four Resource Areas. It is agreed that the long-term Solution to the problems of the Bay-Delta Estuary must address four major areas of concern:

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- (a) Ecosystem Quality—To improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species;
 - (b) Water Quality—To provide good water quality for all beneficial uses;
 - (c) Water Supply—To reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta; and
 - (d) System Integrity—To reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic failure of Delta levees.
- 2) Recognizes Interdependence of Four Resource Areas and Resulting Benefits. The success of the effort to develop a lasting Solution for the Bay-Delta depends on the full and equal involvement of all interested parties. In a complex system such as the Bay-Delta, problems and objectives are not independent and self-contained. Relationships or linkages exist between all areas. For example the amount and timing of fresh water flowing into the Bay-Delta affects water quality, and consequently the health of the ecosystem. The integrity of the Delta levees has major implications for water supply, water quality, and ecosystem health. As Governor Pete Wilson noted in his 1992 Water Policy "...a phased approach, linked to simultaneous benefits for all, is critical for any progress."
- (a) Actions create multiple benefits. In many cases activities designed to improve one of the four resource areas (ecosystem quality, water quality, levee system integrity, and water supply reliability) will produce multiple benefits across the four areas.
 - (b) All areas must move forward together. Problems must be resolved in all problem areas. Improvements for some problems will not be addressed without corresponding improvements for other problems. No one sector of society or single revenue source should be made to bear the entire burden of a long-term Solution for the Bay-Delta. Similarly, no one sector should receive benefits without assurances that other sectors will be similarly benefited.
- 3) CALFED Bay-Delta Program Solution Principles. The following principles are central to the CALFED process and represent the basic parameters of a successful long-term Solution for the Bay-Delta. It must:
- (a) Be Affordable—An affordable Solution will be one that can be implemented and maintained within the foreseeable resources of the CALFED Bay-Delta Program and stakeholders.
 - (b) Be Equitable—An equitable Solution will focus on resolving problems in all problem areas. Improvements for some problems will not be addressed

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without corresponding improvements for other problems.

- (c) Be Implementable—An implementable Solution will have broad public acceptance and legal feasibility, and will be timely and relatively simple compared with other alternatives.
 - (d) Be Durable—A durable Solution will have political and economic staying power and will sustain the resources it was designed to protect and enhance.
 - (e) Reduce Conflicts in the System—A successful Solution will reduce major conflicts among beneficial users of water.
 - (f) Pose No Significant Redirected Impacts—A Solution will not solve problems in the Bay-Delta by redirecting significant negative impacts to other parts of the Bay-Delta or other regions of California.
- 4) Early Implementation.
- (a) Significance of Early Implementation Opportunities—The ecosystem restoration element of the CALFED Bay Delta Program is designed to serve as the foundation for the other program elements. Ecosystem restoration Actions represent the first step in realizing benefits for water supply, water quality and system integrity. Moving forward on ecosystem restoration Actions has two benefits. Some Actions will provide immediate benefits, and therefore should be implemented immediately. Other Actions, although they require a substantial lead-time before benefits are obtained, provide important research in the Bay-Delta to guide adaptive management. This second set of Actions should also begin immediately, both to gain the benefits of the increased knowledge, and to hasten the realization of the benefits.
 - (b) Criteria for Early Implementation—Federal funds may be obligated prior to completion of CALFED final programmatic EIR/EIS only if (1) consistent with 40 C.F.R. 1506.1(C) and (2) used for purposes that the Secretary of the Interior finds are of sufficiently high priority to warrant such an expenditure. In addition, each selected project must:
 - (i) be justified independently of the Program by the lead agency(ies) for that project;
 - (ii) be accompanied by an adequate environmental document, the preparation of which included consultation with responsible and trustee agencies; and
 - (iii) not prejudice the ultimate decision of the Program.

F) Administration

- 1) Multiple Funding Sources; Multiple Projects. A major goal of the Program is to

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provide for coordination of funding from multiple sources directed to multiple projects on a dynamic basis to maximize flexibility in timing and implementation of Bay-Delta Actions.

- 2) Coordination with Existing Programs and Funding Sources. It is highly desirable to coordinate expenditures of funds authorized by the Bay-Delta Act and Proposition 204 with expenditures of funds pursuant to ongoing programs in order to achieve maximum overall effectiveness of Bay-Delta Actions.
- 3) Actions taken under this Agreement will be fully coordinated with existing programs, activities, and agreements, and will comply with applicable provisions of State and Federal laws and regulations, including, but not limited to the National Environmental Policy Act, California Environmental Quality Act, Federal and State Endangered Species Acts, and the Fish and Wildlife Coordination Act.
- 4) Recognition of Terms of Existing Cost sharing Agreements. The parties recognize that there are a number of existing cost sharing agreements with terms and cost sharing ratios specific to their subject matter and, in some cases, designed to comply with authorizing legislation. This Agreement does not alter the terms of those prior agreements nor does it limit the ability of parties to agree to different cost sharing terms and ratios for other projects, in the absence of such existing agreements.
- 5) Coordination Among Implementing Entities. A high level of coordination among implementing entities is desirable to insure that maximum benefits are obtained for dollars expended. The parties commit to spending these funds in such a manner as to secure maximum results from each expenditure.
- 6) Need for Long-term Commitment and Funding for Implementation: State / Federal / Stakeholders. Implementation of the Solution developed by the CALFED Bay-Delta Program will be a multi-decade effort. Partnerships among agencies and with stakeholders formed during this process must continue throughout this effort. To date, cost sharing by the Federal government, the State of California and the stakeholder community has been an essential factor in the progress and success of the Program. This level of cooperation will need to continue to ensure that the costs of Bay-Delta Solution are equitably and fairly distributed.
- 7) Accounting System and Reporting Cycle. There is a need for an accounting system and reporting cycle to maintain cumulative cost sharing ratios while enabling flexible contributions by year and project. The parties share a common goal of maximizing the flexibility with which Actions may be carried out pursuant to this Agreement. The parties intend to cooperate in funding the Actions based on appropriations available to them, and are structuring this Agreement so that one or more party(s) may fund all or any percentage of an Action, in order that an Action not be delayed due to one party's funding constraints. Details of the

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accounting and reporting actions referred to above are contained in sections III(C) and III(D).

Nothing in this Agreement is intended to prevent any party from moving forward with implementation of an Action in the absence of another party's having obtained an appropriation or other funding for that Action, although cost sharing credit for such an Action may be acquired only as established in this Agreement including amendments and supplements.

G) Agreement

- 1) **Does Not Limit Other Ongoing Activities.** Several of the parties to this Agreement are carrying out studies, programs, or actions related to the Bay-Delta. Nothing in this Agreement is intended to limit or prevent any party from proceeding with these activities.
- 2) **Does Not Affect Existing Legal Obligations.** Nothing in this Agreement is intended to affect any party's obligations under existing laws.

H) Long-Term Cost Sharing Principles

- 1) The Long-Term Cost Sharing Principles set forth in Appendix B, which are incorporated into this Agreement by this reference, are endorsed by the parties to this Agreement and are intended to provide a framework for future agreements which may be incorporated in this Agreement as amendments or supplements which may be separately executed.

II) Interim Ecosystem Restoration

A) Restoration Coordination Program

- 1) **Supplemental Principles for Interim Ecosystem Restoration**
 - (a) **Interim Process.** Interim Ecosystem Restoration is intended to cover expenditures of State, Federal and stakeholder Category III funds through federal fiscal year 2000 or until a successor process has been put in place pursuant to the CALFED Bay-Delta Program. It will provide the method for cost sharing for Bay-Delta Actions until it is replaced by a long-term structure.
 - (b) **Includes Funding Incremental to Existing Efforts Only.** The Interim Ecosystem Restoration process is for funding that is incremental to Baseline funding as set forth in Appendix A. Funding under this process is not intended to replace funding currently available from other sources and in connection with other programs.
 - (c) **Public/Stakeholder Input/Involvement in Process.** The parties are committed to insuring that the Bay-Delta stakeholders and members of the general public are involved to the greatest extent possible in project selection and implementation.
 - (d) **Expedited Review and Approval of Projects.** In order to begin implementation as soon as practical of ecosystem restoration Actions that are common to all of the alternatives, have broad support, are of

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environmental benefit and which will provide valuable information for adaptive management of the Bay Delta in later years of the program, the parties are committed to the maximum extent feasible to facilitate expedited review and approval of projects pursuant to this Agreement.

- (e) **Costs Eligible for Cost sharing.** Cost sharing pursuant to this Agreement may include capital and other costs as provided for in task orders for individual restoration Actions. Costs incurred by the parties in carrying out individual restoration Actions pursuant to this Agreement and for which cost sharing shall be calculated may include, but are not limited to: planning costs, including costs associated with preparation of environmental documentation and with obtaining permits and other regulatory approvals; design costs; construction and implementation costs, including contract administration; and costs of initial start-up and testing before a constructed facility is placed into service. The value of in-kind or in-lieu services shall not be credited toward a party's cost sharing contribution. Operations and maintenance are not eligible costs unless specifically listed in an approved task order.
- (f) **Cost Sharing Ratios.** Spending decisions will be made so that neither the State, the Federal government, nor stakeholders will be disproportionately responsible for cost sharing of amounts over the Baseline. It is intended that expenditures by the State and Federal governments pursuant to this Agreement for costs over the Baseline will be equal over time. By mutual agreement of the parties, one party may fund all, none, or any percentage of the cost of an individual restoration Action, as overall cost sharing ratios provided in this Agreement are maintained.

2) **Sources of Funding**

(a) **Category III**

- (i) **Proposition 204.** Proposition 204 authorizes \$60 million for Category III activities.
- (ii) **Bay-Delta Act.** The Bay-Delta Act states that out of the \$143.3 million per year authorized to be appropriated during fiscal years 1998, 1999, and 2000, is to come "the initial Federal share of the cost of developing and implementing that portion of an ecosystem protection plan for the Bay-Delta, referred to as 'the Category III program'" emanating out of the Delta Accord. Pursuant to this Agreement that Federal share is hereby defined to be a total of \$60 million.
- (iii) **Stakeholder Contributions**
- **Current.** Pursuant to commitments in the Delta Accord, the stakeholders have contributed a total of \$22 million with an additional \$10 million expected to be contributed in 1997.
 - **Future.** The parties to this Agreement expect that Stakeholders will continue to contribute an equitable share of the funds necessary to

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implement the Category III program through Fiscal Year 2000.

(b) Additional Ecosystem Restoration

- (i) Proposition 204. Proposition 204 provides for an additional \$390 million to be used for ecosystem purposes as defined in the Proposition, subject to specific conditions as defined in the Proposition.
- (ii) Bay-Delta Act. The remainder of the \$143.3 million per year authorized under the Bay-Delta Act after deduction of the amount identified for Category III in subsection (a) above is authorized to be used for ecosystem restoration purposes as defined in the Bay-Delta Act pursuant to this Agreement and subsequent amendments.

A component of the CALFED Program is early implementation of projects and programs common to all of the alternatives now under consideration by the CALFED Program as outlined in section I(E)4 above. These projects and programs have the goal of providing early environmental and other benefits and of providing valuable information for use in adaptively managing the Bay-Delta system as the Program continues.

Therefore, in order to obtain the greatest benefits of early implementation projects and programs, the Secretary of the Interior commits to expending these funds for the federal share of costs for projects and programs that meet these early implementation goals. This commitment, however, does not alter, replace, or reduce an agency's ultimate authority over any decisions it may make on such programs or projects.

- (c) Funding Contingent. The parties will use their best efforts to seek funding for restoration Actions from whatever sources may be available to them, but recognize that the federal funding is contingent upon appropriations by Congress, and that California's funding is subject in part to the sale of bonds pursuant to the terms of Proposition 204 and to the availability of funds through California's normal budget process or to availability of funding from other sources.

3) Project Selection Process

The Restoration Coordination Program will use the following five step planning and project selection process. Each step of this process will be reviewed and updated as needed. Projects will be selected and funded on a semi-annual basis.

The Ecosystem Roundtable will be providing advice during each step of the process. CALFED agencies will recommend final project selections taking into account the advice of the Ecosystem Roundtable and the Bay-Delta Advisory Council.

(a) Step 1: Identify Near-Term Priorities

The Restoration Coordination Program staff will prepare an implementation strategy which will identify proposed near-term priorities. The strategy will provide guidance on which species, habitat types, and ecosystem processes

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should be addressed and how they should be prioritized. Decisions will be consistent with the restoration strategy detailed in the Ecosystem Restoration Program Plan and will focus on those species and habitats protection of which is of greatest urgency and on the Actions providing the greatest early benefits considering available funding.

(b) Step 2: Identify Stressors and Actions to Address Them

The Restoration Coordination Program staff will prepare a work plan based upon the near-term priorities identified in Step 1. The work plan will provide a summary of the:

- (i) Strategy, including proposed priorities for funding;
- (ii) Stressors that need to be addressed to achieve those priorities; and
- (iii) Actions or types of Actions that need to be undertaken to further define and address the Stressors.

Semi-annual updates of the work plan will be prepared to respond to adaptive management considerations, additional priorities, changes in funding levels, and progress made in earlier years.

(c) Step 3: Prepare Package to Solicit Applications & Develop Evaluation Criteria

The Restoration Coordination Program staff, assisted by the Restoration technical teams, will prepare a Request for Proposals to solicit applications for funding of projects and programs consistent with the work plan. Project and program proposals can come from a variety of sources including state and federal agencies, local governments, special districts, non-profit organizations, other organizations, and private individuals interested in ecosystem restoration. Criteria for selection of proposals will be prepared and applied to all applicants. The evaluation criteria will be used to guide selection of actions to address the priority species and habitats.

(d) Step 4: Recommend Projects and Programs

The Restoration Coordination Program staff, working with technical review panels, will review and rank the proposals using the evaluation criteria. An overall draft list of recommended projects and programs will be forwarded to the Ecosystem Roundtable for its review and advice. The list of recommended projects and programs, along with the advice from the Ecosystem Roundtable will be forwarded through the CALFED Bay Delta Program staff to BDAC for review and comment. BDAC will transmit its comments through the CALFED Bay Delta Program to the CALFED agencies.

(e) Step 5: Approve Project List

The CALFED agencies, meeting together, will review the list of recommended projects and programs, as well as the comments and advice from BDAC and the Ecosystem Roundtable. The CALFED agencies will jointly approve a final list of recommended projects and programs and

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forward that list to the U.S. Secretary of the Interior and the California Resources Secretary for final approval through the staff of the Bay-Delta Program. This list of projects and programs approved by the two Secretaries or their designees will be the projects and programs that will be implemented.

4) Project Implementation Process

In order to be credited pursuant to this agreement, expenditures of funds described in section II (2) above must be made on the list of projects and programs selected in accordance with the above process, or be approved as described in (a) below, and must have an approved task order as described in (b) below. To facilitate efficient management, State and Federal agencies may identify and fund through contracts or grants local and/or nonprofit entities (such as the National Fish and Wildlife Foundation) and private persons to carry out CALFED Bay-Delta Program activities. The agency or agencies that have been chosen to carry out a particular project or program will do so in accordance with its/their normal contract and grant authorities.

(a) Additional Expenditure Approval Process

Expenditures from sources other than those listed in section II (2) above, or expenditures on projects and programs other than those selected using the process described in II (3) above, will not be credited for purposes of this Agreement unless such expenditures are approved for inclusion in this Agreement by the U.S. Secretary of the Interior and the California Resources Secretary or their designees.

(b) Task Orders

(i) The parties shall negotiate individual task orders for each of the restoration actions, or elements thereof, selected for implementation. The task orders shall contain the elements set forth in the attached Appendix C, which is incorporated into this Agreement by this reference. Any individual restoration action may be divided into elements to facilitate implementation of the action, and task orders may be negotiated for the elements. Where appropriate, individual task orders shall also be signed by the State or Federal entity responsible for performing or contracting for the work to be performed.

(ii) The task orders shall take effect upon signature by all designated parties, subject to approval of the California Department of General Services and the Executive Director of the CALFED Bay-Delta Program. Neither party shall be obligated to incur costs pursuant to a task order in excess of the costs authorized in the task order. Task orders may be amended by mutual written consent of the parties, subject to approval by the California Department of General Services. The parties may amend task orders to reflect updated costs of restoration actions, as the costs become better refined in defining the scope of the restoration actions.

(iii) Task orders shall have a term and provisions authorizing amendment

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or modification. Upon termination of a task order, the parties shall submit to each other a written notice of completion and a final accounting of all costs incurred pursuant to that task order, up to the date of the written notice of completion, provided, however, that costs may be allowed up to such other date as the parties mutually determine. The final accounting shall be used to establish the parties' responsibilities for any outstanding costs obligated pursuant to the task order.

- (iv) Task orders may be terminated by mutual written consent of the parties. Upon termination of a task order, the parties shall submit to each other a final accounting of all costs incurred pursuant to that task order, up to the date of written notice of termination, provided, however, that costs may be allowed up to such other date as the parties mutually determine. The final accounting shall be used to establish the parties' responsibilities for any outstanding costs obligated pursuant to the task order.
- (v) Task orders may also be terminated by any signatory party providing the other parties with 30-day advance written notice of termination. Upon termination of a task order, the parties shall submit to each other a final accounting of all costs incurred pursuant to that task order, up to that date of the written notice of termination. The parties shall then establish the allowability for cost-sharing purposes of each party's costs incurred up to the date of termination.
- (vi) Each party may carry out all or parts of the work covered in a task order on behalf of the other party as mutually agreed upon in the task order. Costs incurred in so doing shall be credited toward the cost-share obligation of the performing party.

III) Contracting Provisions

- A) Term of Agreement. This Agreement shall become effective upon approval by the California Department of General Services. Unless terminated earlier pursuant to section (H) below, this Agreement shall terminate on or before September 30, 2001, unless extended by mutual agreement prior to that date. California shall not be required to contribute funds pursuant to this Agreement for work performed after the effective date of its termination.
- B) Commencement Date for Costs. As mutually agreeable, each party may include as allowable costs in a task order those costs incurred after November 5, 1996, the effective date of Proposition 204 and the Bay-Delta Act.
- C) Administration of Cost Sharing
 - 1) Annual Accounting. The parties shall make an annual accounting, on a fiscal year basis, for their costs incurred under pursuant to this Agreement.
 - 2) Adjustment of Balance. Costs incurred under pursuant to this Agreement will vary from year to year based on the task orders being implemented and the contracts and grants which have been entered into and made. The parties

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recognize that one party may have incurred costs during a particular fiscal year in excess of its equal share of the overall contribution contemplated under this Agreement. The parties will review the annual accounting and evaluate the balance between the parties in terms of costs incurred and anticipated. Either party may, in consideration of that balance and in consideration of the funding expected to be available, request that the implementation of projects and programs selected in section II be modified to adjust the balance between the parties. Notwithstanding that balance, nothing in this article is intended to prevent either party from proceeding with the implementation of a task order or execution of a contract or grant.

- 3) Transfers of Funds. If the balancing of incurred costs and obligations described above cannot be achieved by modification of the list of projects and programs, the parties may agree to transfer funds between themselves in order to adjust the balance. Such transfers may be reflected in the parties' annual accounting or in the final accounting.
 - 4) Final Accounting. Upon completion of all task orders, or upon expiration of this Agreement, or upon its termination, the parties shall submit to each other a final accounting of all costs incurred pursuant to the task orders contracts and grants made and entered into pursuant to this Agreement.
 - 5) Cost-Sharing of Operations and Maintenance. At the expiration of this Agreement, the parties will evaluate the need for continued cost sharing in operation and maintenance costs of completed restoration Actions. The parties may, where appropriate, execute other agreements for the continued cost sharing of operation and maintenance for such restoration actions on a case-by-case basis.
- D) Budgeting and Funding
- 1) Maximum Payable. The maximum payable by California and the United States pursuant to this Agreement shall not exceed amounts provided by Proposition 204 and the Bay Delta Act, respectively, except to include amounts approved pursuant to section II (4)(a).
 - 2) Budget Process and Format. The parties will establish a mutually acceptable process and format for budgeting for the restoration actions to be performed; recognizing that each party operates on a two-year advance budget cycle.
 - 3) Annual Budget Update
 - (a) Schedule for Update. Each January, the parties shall complete an annual update of the estimated costs of pending restoration Actions, or elements thereof, and of the costs actually incurred pursuant to task orders. The parties shall also review the balance between costs incurred and obligations under the task orders. Nothing in this article is intended to prevent the parties from updating the estimated costs or budget more frequently, if desired.
 - (b) Estimated Budget. Each January, the parties shall complete an estimated

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budget that includes identification of the estimated timing of annual and capital costs, and shows estimated costs to be incurred over the next three fiscal years. This budget does not represent a commitment of funds by the parties. Funds may be committed only pursuant to the normal budget processes of the State or Federal agency responsible for particular task orders, contracts or grants.

E) Coordination with Respect to Restoration Actions

The parties shall cooperate and consult closely with each other and with other participants in the CALFED process in the development and implementation of the restoration actions covered by this Agreement. The parties shall provide each other with review copies of draft reports, proposals, designs, and other significant material, and shall coordinate with each other on regulatory agency agreements and environmental documentation which may be necessary to implement individual actions. The parties or their designees shall meet and confer as necessary to keep each others informed of the status of development and implementation of individual restoration actions.

F) Reports

The parties shall submit to each other annually written documentation or reports describing the party's activities pursuant to this Agreement.

G) Amendments

- 1) Not Valid Unless in Writing. Amendments to this Agreement shall not be valid unless made in writing, signed by the parties, and approved by the California Department of General Services. No oral understanding or agreement not incorporated herein shall be binding on any of the parties herein.
- 2) Impossibility of Performance. If either party or agency within the control of either party becomes unable for reasons outside of its control, including restraint by a court or public agency, to carry out a restoration action specific in a task order, the party shall, by written notice, so inform the other party. The parties shall, within 30 days from the date of the notice, attempt to resolve the inability to carry out the action. If resolution cannot be achieved within this time, any prospective cost-sharing obligations incurred pursuant to an issued task order shall be suspended until such time as parties achieve resolution.

H) Termination

Either party may terminate this Agreement in whole or in part with 60 days written notice. The two parties shall agree on the termination conditions, including but not limited to the effective date.

I) Administration of Agreement

This Agreement shall be administered by the California Secretary for Resources and the Secretary of the Interior or their designees in conjunction with the CALFED Executive Director and management and staff of the CALFED member agencies.

J) Notice

- 1) For the purposes of administering this Agreement, documents which California

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is required to submit to the U.S. shall be sent to:

Bruce Babbitt

Secretary of the Interior

- 2) and documents which the U.S. is required to submit to California shall be sent to:

Douglas P. Wheeler

Secretary for Resources

K) Dispute Resolution

In the event of a dispute, the parties shall meet as soon as possible to resolve the dispute. If the parties cannot reach agreement, then either party shall submit any claim it may have regarding the performance of this Agreement, including but not limited to claims for additional compensation or extension of time, to the Secretary for Resources and to the Secretary of the Interior. The parties shall then attempt to negotiate a resolution of such claim. However, the U.S. does not waive any rights or duties it may have as provided under federal laws, rules, or regulations.

L) Records and Audits

Subject to applicable laws and regulations, both parties shall have full access to the books and records of the other party as they pertain to this Agreement, with the right to make copies thereof. Unless otherwise provided by federal laws, rules, or regulations, the parties shall be subject to the examination and audit of the California State Auditor for a period of three years after final payment under the Agreement.

M) Standard Clauses

The provisions of the attached Appendix D are hereby incorporated into this Agreement.

IV) Signatures

In witness whereof, the parties hereto have executed this Agreement on this _____ day of _____, 1997.

THE STATE OF CALIFORNIA

THE UNITED STATES OF AMERICA

By _____
Douglas P. Wheeler
Secretary for Resources

By _____
Bruce Babbitt
Secretary of the Interior

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Appendix A – Baseline Funds, Programs and Projects
[a listing of items that define State and Federal Baseline expenditures]

Appendix B – Long-Term Cost Sharing Principles
[a listing of principles for the Long-Term Financial Strategy]

Appendix C—Contents of Task Orders

Task orders prepared pursuant to this Agreement shall include, at a minimum, the following details:

1. Detailed scope of work to be undertaken
2. Identification of agency(ies) or entity(ies) performing the work, and specific roles and responsibilities of CALFED member agencies, if applicable;
3. Deliverables to be provided, if any;
4. Term;
5. Schedule for performing the work;
6. Staff to be assigned and estimated hours;
7. Cost of the work and maximum payable;
8. Sources of funds;
9. Cost-sharing arrangements;
10. Payment schedule and invoicing procedure;
11. Schedule for coordination meetings, if applicable;
12. Schedule and process for review and approval of work at key milestones;
13. Schedule for status reports and fiscal reports;
14. Names of contact persons;
15. Signatures of authorized representatives of each party;
16. Termination clause.

Appendix D – Standard Clauses